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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949.

NO. 419

PLANKINTON PACKING COMPANY,

Petitioner,

vs.

WISCONSIN EMPLOYMENT RELATIONS BOARD, WILLIAM STOKES, and LOCAL #50, UNITED PACKING HOUSE WORKERS OF AMERICA, C.I.O.,

Respondents.

PETITIONERS' BRIEF.

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PETITIONERS' BRIEF.

THE OPINION OF THE COURT BELOW.

The opinion of the Supreme Court of the State of Wisconsin is officially reported in 225 Wis. 285. It may be found in the printed Record before this Court at pages 70-77.

STATEMENT AS TO JURISDICTION.

This Court has jurisdiction in the present matter under the provisions of the Judicial Code, Title 28, U. S. C. A., Section 1257 wherein it is provided in part:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .
>
> (3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

In this case Sections 111.04 and 111.06 (1) (a) (c) Wisconsin Statutes, 1945 together with a direction for judgment enforcing an order based upon those statutes are drawn in question upon the ground that the Statutes, the Order and the Judgment, as construed by the Supreme Court of the State of Wisconsin are repugnant to Article I, Section 8 and Article VI of the United States Constitution in that they are contrary to and in violation of rights conferred and duties imposed by superior federal legislation to-wit, the National Labor Relations Act, 29 U. S. C., Sections 151-166, 49 Stats. 457.

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On July 12, 1949, the Supreme Court of the State of Wisconsin rendered its decision in this case sustaining the validity of the statutes and order. The Supreme Court of the State of Wisconsin is the court of last resort in that state. Its decision and opinion herein are officially reported in 255 Wis. 285 (R. 70-77).

Petitioner contended before the Wisconsin Employment Relations Board (R. 10, 51) before the Circuit Court of Milwaukee County (R. 1, 58) and before the Supreme Court of the State of Wisconsin (R. 76) that the statutes and order of the Board referred to were unconstitutional, void, and of no effect for the reasons above referred to. The Federal question here involved was thus raised before every tribunal which has heard this litigation.

The Supreme Court of the State of Wisconsin specifically held that neither the statutes, nor the order based thereon, in any way conflicted with rights conferred or duties imposed by the National Labor Relations Act and held that the Wisconsin Employment Relations Board accordingly did have jurisdiction to entertain the proceedings before it and to make the orders which it issued.

The Wisconsin Supreme Court has thus taken the position that the State of Wisconsin may validly restrain an employer unfair labor practice of encouraging or discouraging membership in a union and that the exercise by the state of such power does not invade the field set aside for Federal control under the Constitution and Statutes of the United States even though the National Congress has forbidden the same conduct under the National Labor Relations Act.

STATEMENT OF THE CASE.

This case involves the right of the Wisconsin Employment Relations Board to hold hearings, issue findings, and make orders with reference to alleged unfair labor practices, by an employer which is subject to the regulation of the National Labor Relations Board, where the practice alleged also constituted an unfair labor practice under the Federal law.

The Plankinton Packing Company, hereafter referred to as the "Company" or the "Employer" is a wholly owned subsidiary of Swift & Company, and is engaged in the business of slaughtering and otherwise preparing livestock for the consuming market. Its plant is located in Milwaukee, Wisconsin. Approximately 45 per cent of the raw materials processed by it come into the plant through interstate channels and some 64 per cent of its product is shipped outside the state for ultimate consumption (R. 13). The production and maintenance workers of the Company are represented by the C. I. O. United Packing House Workers Local No. 50, hereafter referred to as the "Union" (R. 12). That Union was originally certified as the collective bargaining agent upon certification by the National Labor Relations Board on or about March 18, 1938. 5 NLRB 813; 6 NLRB 561.

On February 20, 1945 the National War Labor Board issued a "directive order" which provided, among other things, for a union-management contract containing a union security provision. This provision required, pursuant to the order, that all employees who, on March 9, 1945, were members of the Union in good standing and all employees who became members after that date should, as a condition of employment maintain their membership in the Union.

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The directive and agreement also provided for a fifteen-day escape period during which any member of the Union could withdraw without prejudice to his employment rights. Provision was made for the submission of any claim of intimidation to join or continue membership in the Union during that 15-day period to an arbitrator appointed by the National War Labor Board (R. 7-8). The employee, William Stokes, took advantage of this 15-day escape clause and resigned from the Union on or about March 6, 1945 (R. 12). Stokes was discharged by the petitioner-employer on or about May 9, 1945 (R. 12). Thereafter he commenced proceedings before the Wisconsin Employment Relations Board alleging violations of Section 111.06 (1) Wisconsin Statutes based upon the claim that his discharge from employment was the direct result of his resignation from the Union (R. 6-10).

Despite protests against its assuming jurisdiction (R. 10, 51) the Wisconsin Employment Relations Board held hearings and on December 6, 1946 issued its findings of fact, conclusions of law and order reciting among other things the identity of the Plankinton Packing Company and the C. I. O. Union; the issuance of the War Labor Board directive order; the resignation of the employee Stokes; that after his resignation the employee member of the Union commenced a course of conduct intended to coerce and intimidate Stokes and to cause his loss of employment for the reason that he had exercised his right to refrain from membership in the respondent union; and that on May 9, 1945, at the request of the Union, the employer discharged the complainant Stokes and thus interfered with the right of Stokes to refrain from membership in the Union. Its conclusions of law include the holding that the employer committed an unfair labor practice "by interfering with the right of William Stokes to refrain from

membership in the respondent Union by discharging said Stokes at the request of and pursuant to the coercive tactics of the respondent Union". Based upon those findings and conclusions, the Wisconsin Employment Relations Board issued its order directing the company to cease and desist from interfering with the rights of any of its employees to refrain from membership in the respondent Union and further directed that it offer to Stokes full reinstatement without prejudice, that it make him whole for any loss of back pay and that it post a notice to its employees that it will cease and desist as ordered (R. 44-48).

Thereafter proceedings were commenced in the Circuit Court of Milwaukee County, one by the Employer by means of Petition for Review seeking to set aside the order of the Board (R. 1), and a Petition for Enforcement by the Board (R. 55-56). These proceedings were consolidated into one action. The Circuit Court in its opinion filed November 15, 1948, ruled that the order entered by the State Board on December 6, 1946, was void for the reason that the State Board had no jurisdiction to make the same (R. 66). By its judgment entered December 2, 1948 the Circuit Court directed the Wisconsin Employment Relations Board to dismiss the proceedings before it for lack of jurisdiction (R. 67).

The Wisconsin Employment Relations Board appealed from that judgment and under date of July 12, 1949 the Supreme Court of the State of Wisconsin reversed the judgment of the Circuit Court of Milwaukee County and directed the Circuit Court to enter judgment enforcing the order of the Board (R. 77). On October 6, 1949 this Court, by order of the Chief Justice, extended the time for filing Petition for Writ of Certiorari herein to and including October 25, 1949 (R. 77). This Court granted certiorari on December 12, 1949.

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Specification Of Errors.

The Supreme Court of the State of Wisconsin erred in the following respect:

In reversing the judgment of the Circuit Court for Milwaukee County, Wisconsin, which judgment vacated the order of the Wisconsin Employment Relations Board; and in directing entry of judgment enforcing the entire order which required the petitioner to reinstate the employee Stokes, to reimburse him for any lost back pay and to post a notice of compliance; in holding that Sections 111.04 and 111.06 (1) (a) (c) Wisconsin Statutes, 1945, as construed and applied in this case and any judgment or order based thereon were not in violation of Article I, Section 8 and Article VI of the Constitution of the United States.

ARGUMENT.

The question presented by this case relates to a conflict of jurisdiction between the Government of the State of Wisconsin and of the Government of the United States when both have asserted authority, by virtue of their respective labor relations acts, to govern the same conduct.

In general, the discussion which follows pursues the same line of reasoning upon which petitioner's brief in support of the petition for certiorari was based. Our endeavor is to show the rule as enunciated by this Court and to demonstrate its applicability to the facts presented in the immediate case.

Under Article I, Section 8 of the Constitution of the United States, Congress is vested with power to regulate commerce with foreign nations and among the several states and to make all laws necessary and proper for carrying that power into execution. By Article VI, the laws of the United States made pursuant to the Constitution are the Supreme law of the land. The judges in every state must be found thereby, anything in the Constitution or laws of any state to the contrary notwithstanding. The same, of course, is true of the legislative acts of the various states.

There can be, at this stage, no question but that the National Labor Relations Act and acts amendatory thereto are valid exercises by Congress of its power to regulate commerce as above delineated.

The general principle of law, arising under the Constitution of the United States, that conflicting state law must yield to superior Federal law in matters involving interstate commerce has had a long and stormy history. Perhaps its first application in the field of labor relations was before

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this court in *Allen-Bradley Local* 1111, *et al.* v. *Wisconsin Employment Relations Board et al.*, 315 U. S. 740. That case is perhaps the first illustration of the principle contended for by petitioner here, namely, that the states may act in fields of concurrent jurisdiction only until such time as the National Congress, in the legitimate exercise of its powers in the same field, has enacted legislation governing that field in detail. In that case it was only because police regulation (maintenance of the public peace) is of purely local concern that this Court permitted the Wisconsin Employment Peace Act to stand the challenge made against it.

Subsequently, in *Hill* v. *Florida*, 325 U. S. 538 the doctrine of federal supremacy was applied to render invalid a provision of the Florida law which conflicted with the policy of the National Labor Relations Act. It appears that for some time thereafter the matter of conflicting jurisdiction lay comparatively dormant, at least, in the labor relations field. However, beginning with the *Bethlehem Steel Company* case (*Bethlehem Steel Company* v. *New York State Labor Relations Board*, 330 U. S. 767, 67 Sup. Ct. 1026) in 1947, this Court has had occasion to consider a substantial number of cases in which the problem was raised.

The petitioner takes the position that under this recent line of decisions the correct rule of law applicable to this case is simply this: *When the National Congress has exercised its Constitutional power to forbid, to regulate or to expressly permit any particular type of activity in the realm of employment relations within the commerce clause, that activity has been removed wholly from the field of state control.*

The intent of Congress to exclude the operation of the state boards in actions such as that presented here is made quite clear by the provisions of the National Labor Re-

lations Act in effect at the time of the action complained of. 29 U. S. C. 160 (Sec. 10 (a) of the Wagner Act).

> "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise."

We will point out hereinafter that the action of the petitioner complained of before the state board in this case, was also an unfair practice listed in Section 8 of the National Labor Relations Act and that, accordingly, Section 10 (a) above applies.

Representatives of various state governments involved have attacked this rule, frequently upon the basis that a state board was not deprived of its authority to act until such time as the National Board had actually exercised its jurisdiction in some manner over the exact controversy then being considered by the state board. Representatives of the State of Wisconsin, including its Supreme Court, have been particularly strenuous advocates of the so-called "case-by-case-test". This Court, however, has left no room for doubt on that point. In the *Bethlehem Steel Company* case it was stated at 330 U. S. 776:

> "The State argues for a rule that would enable it to act until the Federal Board had acted in the same case, but we do not think that a case-by-case test of Federal supremacy is permissible here. The Federal Board has jurisdiction of the industry in which these particular employers are engaged and has asserted control of their labor relations in general. It asserts, and rightfully so * * * (its power to decide the issue involved). We do not believe this leaves room for the operation of the state authority asserted."

Thereafter the case-by-case test was urged by the Wisconsin Board in *LaCrosse Telephone Company* v. *W. E. R. B.*, 336 U. S. 18, 68 Sup. Ct. 906. This Court again made its position clear by referring to its language in the *Bethlehem* case and continuing at 336 U. S. 25 as follows:

> "We went on to point out that the National Board had jurisdiction of the industry in which those particular employers were engaged and had asserted control of their labor relations in general. Both the state and federal statutes had laid hold of the same relationship and had provided different standards for its regulation. Since the employers in question were subject to regulation by the National Board, we thought the situation too fraught with potential conflict to permit the intrusion of the state agency, even though the National Board had not acted in the particular cases before us.
>
> "Those considerations control the present cases. This employer is concededly engaged in interstate commerce; and the industry is one over which the National Board has consistently exercised jurisdiction."

The petitioner believes that the above quoted language is particularly significant, for it indicates the test to be whether both State and National Governments, through their respective legislative branches, have sought to lay hold of the same relationships. Where they have done so, as this Court points out, the situation is fraught with potential conflict. Even though the language of the acts may be identical, the administration of those provisions will, of necessity, vary. The fact that uniform acts do not necessarily result in uniform application is illustrated clearly by the well-known fact that the provisions of many of our so-called uniform laws, such as the Negotiable Instruments Law, are interpreted variously by the various states.

We should, perhaps, at this point refer to what counsel for the State Board apparently considers our over-emphasis upon the fact that the National Board has previously exercised its jurisdiction over this employer and its employment relations. Of course, we recognize that the exercise of that power is not the sole test. We do lay stress upon those matters and do feel they are of considerable importance in this case because they demonstrate an essential part of the petitioner's position here, namely, that the National Labor Relations Board does have jurisdiction. In other words, we show the jurisdiction because there could, of course, be no potential conflict of jurisdiction if the National Board did not have jurisdiction.

This Court, in *Gilson Brothers* v. *Wisconsin Employment Relations Board*, No. 383, this term, denied the application of the employer for writ of certiorari. Petitioner here does not, of course, know with any certainty the reasons which prompted the denial of the writ there prayed. We do, however, think it significant that in the Gilson case there was nothing in the record to show that the National Board ever had exercised any jurisdiction over the employer and there was no evidence whatever, as we understand the record, that that employer was engaged in such activities as to bring its labor relations clearly within the authority of the National Labor Relations Board.

The Supreme Court of Wisconsin, in overruling the Milwaukee Circuit Court, predicated its decision entirely upon its earlier decision in *Algoma Plywood & Veneer Co.* v. *W. E. R. B.*, 252 Wis. 549, 32 N. W. 2d 417 (affirmed, 336 U. S. 301, 69 S. Ct. 584). But note, that its decision here was based not upon the language of *this Court* in the *Algoma* case but on its own language. Your petitioner respectfully submits that the decsion of this Court in the *Algoma* case does not, in fact, support the state's position

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but clearly sustains that of the petitioner. In the *Algoma* case this Court took considerable pains to distinguish certain of its earlier decisions which were urged as controlling. The basis for the distinction was simply that in the *Algoma* case the activity condemned by the Wisconsin Board and Statutes was not an activity forbidden by the National Labor Relations Act. In the language of the Court, at page 314 of 336 U. S. the State Board had jurisdiction because:

> "Since the enumeration by the Wagner Act and the Taft-Hartley Act of unfair labor practices over which the National Board has exclusive jurisdiction does not prevent the states from enforcing their own policy *in matters not governed by Federal law*, such freedom of action by a state cannot be lost because the National Board has once held an election under the Wagner Act." (Emphasis supplied.)

Only shortly before the *Algoma* case this Court had under consideration another section of the Wisconsin Statutes governing employment relations. *International Union* v. *W. E. R. B.*, 336 U. S. 245, 69 Sup. Ct. 516. This case is commonly referred to as the *Briggs-Stratton* case, identifying the employer. Section 111.06 (2) (h) of the Wisconsin Statutes was there involved. Under that section it was an unfair labor practice, as defined by the Wisconsin Act, for *an employee* "to engage in any concerted effort to interfere with production except by leaving the premises in an orderly manner for the purpose of going on strike." In considering the activity forbidden by the state act this Court said (336 U. S. 253):

> "Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied . . . the conduct here described is not forbidden by this Act and no proceeding is authorized by which the Fed-

eral Board may deal with it in any manner. While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. *Policing of such conduct is left wholly to the states . . .*"

". . . There is no existing or possible conflict or overlapping between the authority of the federal and state Boards, because *the federal Board has no authority to investigate, approve or forbid the union conduct in question. This conduct is governable by the state or it is entirely ungoverned.*" (Emphasis supplied.)

This Court itself then distinguished the *Briggs-Stratton* case from the *Bethlehem Steel* and *LaCrosse Telephone* cases, *supra*. It concluded as follows (336 U. S. 264):

"We think that this recurrent or intermittent unannounced stoppage of work to win unstated ends *was neither forbidden by Federal statute nor was it legalized and approved thereby. Such being the case, the state police power was not superseded* by congressional act over a subject normally within its exclusive power and reachable by federal regulation only because of its effects on that interstate commerce which Congress may regulate. *Labor Board* v. *Jones & Laughlin*, 301 U. S. 1; *Bethlehem Steel Co.* v. *Board*, 330 U. S. 767.

"We find no basis for denying to Wisconsin the power, in governing her internal affairs, to regulate *a course of conduct neither made a right under federal law nor a violation of it* and which has the coercive effect obvious in this device." (Emphasis supplied.)

The situation presented here is for many purposes like that present in the case of *Pennsylvania Labor Relations Board* v. *Frank*, 362 Pa. 537, 67 Atl. 2d 78. There the Pennsylvania Supreme Court used the following language (67 A. 2d 79):

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"The clear implication of the decision of the Supreme Court of the United States in *Bethlehem Steel Co. et al*, v. *New York State Labor Relations Board* (330 U. S. 767, 67 S. Ct. 1026, 91 L. Ed. 1234), is that wherever the employer-employee relationship is one over which Congress has the power of regulation and with regard to which Congress has acted, state power is suspended and cannot constitutionally be exercised . . . The criterion to determine validity of the exercise of state power is not whether the agency administering federal law has acted upon the relationship in a given case; rather, it is whether Congress has asserted its power to regulate that relationship."

he Pennsylvania Court then goes on to consider the *La-rosse Telephone* case and the *Briggs-Stratton* case. With ference to the *Briggs-Stratton* case, the Pennsylvania ourt states (p. 80):

"The implication is clear from the language of the opinion that if the activities in question were within the authority of the federal Board to investigate, approve or forbid, the existence of such authority would immunize the activities from state control."

also points out similar language in the *Algoma* case and en goes on as follows (p. 80):

"We cannot agree with the interpretations the Board attempts to place on these decisions. Their unmistakable effect considered in connection with the *Bethlehem Steel* case, is that the National Labor Relations Act gave the National Board exclusive jurisdiction in matters within the scope and cognizance of the Act, including the prevention of unfair labor practices enumerated in section 8 of the Act, and closed the door to state action in regard to such matters. Since it is admitted that the alleged unfair practices here involved under section 6 of the Pennsylvania Labor Relations Act are also prohibited by section 8 of the National Act, it follows that the Board was without jurisdiction to act if appellee was engaged in interstate commerce within the meaning of the National Labor Relations Act."

The rule, as stated above, is that if the alleged unfair practice is an unfair labor practice under both Federal and State acts the state board is without jurisdiction.

Bearing the above rule in mind let us re-examine the factual situation presented here. It is clear, first of all, that the employer, Plankinton Packing Company is an employer subject to the National Labor Relations Act. The very union in question was certified by the National Labor Relations Board as the appropriate bargaining agency for the employees. 6 NLRB 561. The National Board had also exercised its jurisdiction in other matters. The Matter of Plankinton Packing Company, 5 NLRB 813; The Matter of Plankinton Packing Company, 69 NLRB 920. It also asserted its jurisdiction by entertaining a petition for representation by the rival A. F. of L. Union (R. 43).

Pursuant to a directive of the National War Labor Board the employer incorporated in its collective bargaining agreement with the C. I. O. union a maintenance of membership provision which did, however, contain a so-called fifteen-day escape clause for the purpose of permitting any employee to withdraw from the union during that time without jeopardizing his employment rights. Stokes took advantage of that escape clause—he had every right to do so—and resigned from the union on March 6, 1945. He was not discharged from the employ of the company until some three months later, the date of the discharge being May 9, 1945. The reason assigned by the employer for the discharge was the continued use by Stokes of vile and obscene language despite warnings that repetition would result in disciplinary action. The Wisconsin Employment Relations Board found that Stokes' discharge was at the request of the union and that the company thus interfered with the right of Stokes to refrain from membership in the union. It found that the employer committed an unfair labor practice "by interfering with the right of William

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Stokes to refrain from membership in the respondent union by discharging said Stokes at the request of and pursuant to the coercive tactics of respondent union". These findings furnished the basis of the Wisconsin Board's order directing the petitioner here to cease and desist from interfering with the rights of any of its employees to refrain from membership in the respondent union, to offer Stokes full reinstatement without prejudice, to make him whole for any loss of back pay and to post a notice of compliance.

The complaint of the employee before the Wisconsin Board alleged the commission of an unfair labor practice in violation of Section 111.06 (1) (c) of the Wisconsin Statutes. That statute provides in part as follows:

> "It shall be an unfair labor practice for an employer . . .
>
> (a) To interfere with, restrain or coerce his employes in the exercise of the rights guaranteed in Section 111.04 (right of self-organization, etc.) . . .
>
> (c) 1. To encourage or discourage membership in any labor organization, employe agency, committee, association or representation plan by discrimination in regard to hiring, tenure or other terms or conditions of employment; (providing that an all union contract may be made under certain conditions)."

Corresponding provision of the National Labor Relations Act, as it stood at the time of this alleged violation, was found in Title 29, U. S. C. section 158 (3) where unfair practices are defined to include:

> "(1) To interfere with, restrain or coerce employes in the exercise of the rights guaranteed in Section 7. (Section 7 relates to the right of self-organization to join or assist labor organizations, and to engage in concerted activities for the purpose of collective bargaining.) . . .
>
> "(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to *encourage or discourage* membership in any

> labor organization provided (that nothing *in this act* shall prevent an employer from entering into a closed shop agreement with the representative of the employees)." (Emphasis Supplied.)

While the language of these two provisions is transposed slightly, there can be no doubt that they were directed at the same type of employer discrimination and that the discharge, for the reasons found by the Wisconsin Board in this case, would be in violation of either act. *National Labor Relations Board* v. *American Car & Foundry Co.* (C. A. 7, 1947) 161 F. 2d 501. *National Lab. Rel. Bd.* v. *Cowell Portland Cement Co.*, (CA 9, 1945) 148 F. 2d 237. *Eagle-Picher Mng. & S. Co.* v. *Nat'l Lab. Rel. Bd.*, (C. A. 8, 1941) 119 F. 2d 903.

Even the remedial authority of the two boards is virtually identical here. Section 111.07 (4) of the Wisconsin Statutes provides:

> "Final orders may dismiss the charges or require the person complained of to cease and desist from the unfair labor practices found to have been committed . . . and require him to take such affirmative action including reinstatement of employees with or without pay as the board may deem proper."

Under the National Act, 29 U. S. C., Section 160, the National Board may, after hearing:

> "issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay as will effectuate the policies of this act."

It would thus seem to be abundantly clear that unless both the state and national boards are to retain jurisdiction to entertain charges of the type here involved, and to make potentially conflicting orders, the state board must, in compliance with the Constitutional mandate, yield its position.

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An effort has been made heretofore by the Attorney General of Wisconsin to make it appear that the rule contended for has no application in this case. It is said that, within the rule of the *Algoma* case, *supra*, all the State Board is doing is to apply its more "restrictive legislation". It is said too, this interpretation must follow unless the Court is to permit an employer to avoid the application of the more restrictive state statute by the simple assertion that an employee's discharge was not pursuant to a union shop agreement.

We do not share the fear expressed by counsel for the Board that mere recital by an employer in its pleadings or in its testimony before the Board that its action was upon an entirely proper motive would prevent the hearing agency from making a finding contrary to the employer's position.

To come within the rule of the *Algoma* case, we submit, it must be found that the discharge was pursuant to an all-union agreement which was not adopted in accordance with the applicable provisions of law. Nowhere in this entire case record does there appear any charge, by the employee, by the Board or by the Board's counsel, that this discharge was in accordance with a union shop agreement.

The factual situation presented here is for all purposes the same as if there had been no maintenance of membership provision as directed by the National War Labor Board. It is the same as if there were, in fact, no union contract whatever. The only question considered by the Wisconsin Board was whether the discharge of the employee at the request of the union was an unfair labor

practice because it encouraged membership in that union and at least inferentially discouraged membership in any other. The State Board found that it was an unfair practice for that reason. If those findings are correct (and we must, at this time, assume them to be so) then the company's action was also in violation of the National Labor Relations Act and within the rule of the *Bethlehem* case, *supra*, the *LaCrosse Telephone* case, *supra*, the *Algoma* case, *supra*, the *Briggs-Stratton* case, *supra*, and the *Pennsylvania Labor Relations* case, *supra*, the State of Wisconsin has no jurisdiction to act or to make any orders in connection therewith against this employer. We submit that in sustaining the jurisdiction of the State Board, on the facts in this case, the Supreme Court of the State of Wisconsin clearly erred. Its judgment and order should be reversed.

Conclusion.

It is respectfully submitted that the judgment of the Supreme Court of the State of Wisconsin directing the entry by the Milwaukee County Circuit Court of an order of enforcement of the order of the Wisconsin Employment Relations Board directing the reinstatement of the discharged employee Stokes; the payment to him of back pay; the cease and desist order, and the posting of a notice of compliance was in error and should be reversed.

Respectfully submitted,

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